

NOT FOR PUBLICATION

DEC 20 2005

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES,

Plaintiff - Appellee,

v.

BRADLEY KISZER,

Defendant - Appellant.

No. 04-10611

D.C. No. CR-03-00386-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Argued & Submitted November 17, 2005
San Francisco, California

Before: O'SCANNLAIN, THOMAS, and TALLMAN, Circuit Judges.

Bradley Kischer appeals the district court's denial of his Motion to Suppress Physical Evidence. He was convicted of being a felon in possession of a firearm and preserved the right to appeal the suppression ruling. We affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

The district court heard testimony and determined that on July 25, 2003, Officer Evan Rosenthal, a Las Vegas Metropolitan Police Officer, reasonably suspected that criminal activity might be afoot when he saw Kischer, at 3:00 a.m., running out of the shadows from the parking lot of a 24-hour gambling and drinking establishment and darting across a four-lane road. Kischer was carrying a compact disc case in his left hand with his right hand in his back pocket.

Sufficient evidence existed to support an investigative detention and a protective pat-down frisk. *See Terry v. Ohio*, 392 U.S. 1, 27 (1968). Officer Rosenthal had a reasonable and articulable suspicion that Kischer was jaywalking. When Kischer failed to immediately remove his right hand from his pocket, the lone officer asked Kischer whether he had any weapons. When Kischer responded he was armed, the officer retrieved a fully loaded .38 caliber revolver with an altered serial number. The district court properly held that Kischer's Fourth Amendment rights were not violated.

AFFIRMED.